UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NO. CV 95-0493-GHK(EX)
MEMORANDUM AND ORDER

CHARLIE SHEPHARD
Plaintiff,

VERSUS

PROVIDENT LIFE & ACCIDENT INSURANCE COMPANY, ET AL.,
Defendants

This matter is before this court on defendant Provident Life & Accident Insurance Company's ("Provident") motion for summary judgment. For the reasons stated below, defendant's motion is granted.

Plaintiff brings this action in pro per to challenge defendant's delay in paying two claims for dental treatment performed in August 1994, until December 1994, upon the filing of the underlying complaint. Under plaintiff's policy with defendant, defendant was obligated to pay 80% of the cost for certain dental and vision

care services received by plaintiff. Plaintiff alleges that defendant's delay in paying these claims resulted in breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud.[1]

Defendant, on the other hand, contends that its delay in paying the claims resulted from a clerical error wherein plaintiff's coverage was accidentally administratively terminated even though defendant continued to collect premium payment from plaintiff. Accordingly, defendant argues that plaintiff should not be able to maintain any of the alleged claims.

Plaintiff first alleges that defendant's refusal to pay plaintiff's claims resulted in breaches of contract. However, defendant extinguished its contractual obligations

[1]In his opposition papers, plaintiff argues that he has stated a cause of action for intentional infliction of emotional distress. However, a liberal reading of the complaint does not reveal a separate cause of action on this basis, but instead only a request for relief for emotional distress in connection with the other alleged claims. In any event, plaintiff has not proffered sufficient evidence to support a cause of action for intentional infliction of emotional distress. See Cervantes v. J.C. Penney Co., 24 Cal. 3d 579, 593 (1979).

upon payment of the claims in December 1994. See Croskey, Kaufman, et al., Cal. Prac. Guide: Insurance Litigation, 12:13 to 12:16 (The Rutter Group 1995); Reid v. State Farm Mutual Auto. Ins. Co., 173 Cal. App. 3d 557, 576, 218 Cal. Rptr. 913, 923 (1985); Cf. Paulson v. State Farm Mut. Auto. Ins. Co., 867 F. Supp. 911, 917-918 (C.D. Cal. 1994). Accordingly, defendant's motion on the breach of contract claims is **GRANTED**.

Plaintiff next asserts that defendant engaged in conduct, including delaying payment of plaintiff's benefits, that breached its implied covenant with plaintiff to deal fairly and in good faith. Defendant contends that it is not liable to plaintiff for delaying payment of benefits because it has tendered evidence that its conduct was the result of a clerical error and therefore was "reasonable" as a matter of law. Although usually a question of fact, where only one conclusion about the conduct's reasonableness is possible, reasonableness becomes a question of law appropriate for summary judgment. West v. State Farm, 868 F. 2d 348, 350 (9th Cir. 1989). In light of the uncontroverted evidence that the four-month delay was a clerical error, plaintiff has

not made a showing sufficient to go to the jury on the reasonableness of defendant's conduct. See Neal v. Farmers Ins. Exch., 21 Cal. 3d 910, 925, 148 Cal. Rptr. 389, 397 (1978). Thus, defendant's motion on the breach of the implied covenant of good faith and fair dealing claims is GRANTED.

Finally, plaintiff alleges that defendant's conduct with regard to the payment of plaintiff's claims amounted to fraud. However, plaintiff has not tendered sufficient evidence to go to the jury on each of the required elements of fraud. See Handel v. United States Fidelity and Guar. Co., 192 Cal.App. 3d 684, 693, 237 Cal. Rptr. 667, 671-72 (1987); Miller v. National Am. Life Ins. Co. of Cal., 54 Cal. App. 3d 331, 337-41, 126 Cal. Rptr. 731, 734-36 (1976). As a consequence, defendant's motion on the fraud claims is GRANTED.

IT IS SO ORDERED.

Dated: This ___ day of October, 1995

GEORGE H. KING
United States District Judge